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Taxpayer requests a ruling that it is the proper claimant to obtain a payment of excise tax under § 6427(l) for the kerosene it will purchase for use by the Entities because Taxpayer will be the ultimate purchaser of the kerosene and the kerosene will be used in commercial aviation.

Section 4081(a)(1)(A) of the Code imposes tax on certain removals, entries or sales of taxable fuel, including kerosene.

Section 4081(a)(2)(A)(iii) provides that the rate of tax on kerosene is \$0.243 per gallon. Section 4081(a)(2)(B) provides that the tax imposed by § 4081(a)(2)(A)(iii) is increased by \$0.001 per gallon for the Leaking Underground Storage Tank Trust Fund (LUST) tax. Section 4081(a)(2)(C) provides a reduced rate of \$.043 per gallon for commercial aviation and \$.218 per gallon for noncommercial aviation for kerosene that is removed directly into the fuel tank of an aircraft.

Section 4041(c)(1) imposes a tax on liquid for use as a fuel, other than aviation gasoline, (A) sold by any person to the owner, lessee, or other operator of an aircraft for use in the aircraft, or (B) used by any person in an aircraft unless there was a taxable sale of the fuel.

Section 4041(c)(2) provides that no tax shall be imposed on the sale or use of any liquid for use as a fuel, other than aviation gasoline, under § 4041(c) if tax was imposed on such liquid under § 4081 (other than the tax at the LUST financing rate) and the tax thereon was not credited or refunded.

Section 4041(c)(3) provides that the rate of tax imposed under § 4041(c) shall be \$.218 per gallon (\$.043 pr gallon with respect to any sale or use for commercial aviation).

Section 6427(l)(1) generally provides that if any kerosene on which tax has been imposed by § 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel by § 4041 or 4081, as the case may be.

Section 6427(l)(2) provides that for purposes of the payment available under § 6427(l)(1), the term “nontaxable use” means any use exempt from tax imposed by § 4041(a)(1) other than by reason of a prior imposition of tax.

Section 6427(l)(4)(A) provides that any payment for kerosene used in commercial aviation (as defined in § 4083(b)) shall not apply to so much of the tax imposed by § 4041 or 4081, as the case may be, as is attributable to (i) the LUST tax of \$0.001 per gallon, and (ii) so much of the rate of tax specified in § 4041(c) or § 4081(a)(2)(A)(iii), as the case may be, as does not exceed \$0.043 per gallon. In other words, the payment under § 6427(l)(4)(A) is the difference between the tax imposed and \$.044 cents per gallon.

Section 4083(b) defines “commercial aviation” as any use of an aircraft for hire in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by §§ 4261 and 4271 by reason of § 4281 (relating to small aircraft on nonestablished lines), § 4282

(relating to affiliated groups), § 4261(h) (relating to skydiving), or § 4261(i) (relating to seaplanes).

Section 48.6427-8(b)(1)(ii) of the Manufacturers and Retailers Excise Tax Regulations provides as a condition to allowance of a claim under § 6427(l), among other things, that the claimant bought the kerosene and did not sell it in the United States.

Section 48.4081-1(b) provides, in part, that the term “sale” means the transfer of title to, or substantial incidents of ownership in, taxable fuel (other than taxable fuel in a terminal) to the buyer for a consideration, which may consist of money, services, or other property.

In this case, Taxpayer is in the business of transporting property for hire by air and does not fall within any of the exceptions listed in § 4083(b). Thus, Taxpayer is engaged in commercial aviation.

Further, Taxpayer will not transfer title to, or substantial incidents of ownership in, the kerosene to the Entities. Taxpayer will buy the kerosene for use by the Entities in the Entities’ aircraft when transporting Taxpayer’s customers’ property. Taxpayer will not resell the kerosene in the United States. Therefore, Taxpayer will be the ultimate purchaser of the kerosene. Based on the foregoing, Taxpayer will be the proper claimant for a payment of excise tax under § 6427(l) for the kerosene it will purchase for use by the Entities.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Stephanie N. Bland
Senior Technician Reviewer, Branch 7
(Passthroughs & Special Industries)